IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3223 OF 2003

IN

FIRST APPEAL NO.1248 OF 2004

Nagri Nivafra Parishad .. Applicant

Versus

Municipal Corporation of Gr.Bombay City .. Respondent

Ms.Seema Sarnaik for Applicant

Mr.M.D.Patil for Respondent

CORAM : P.V.KAKADE,J.

DATE : 17TH SEPTEMBER, 2004

P.C.:

1. Heard both sides.

2. This application is filed by the Applicant alongwith

Appeal for stay of the impugned order passed in Municipal appeal and for direction to the effect that the respondents to refund the amounts being water taxes and sewerage taxes with interest thereon @ 14% p.a. from the date of payment i.e. 1.12.1996 till realisation and further direction to the respondents to adjust the excess amount towards the property tax forthwith.

3. Perused the order passed in the Municipal Appeal along with the contents of the application and affidavit in reply filed on behalf of the respondents.

4. In my view proviso to Section 217 of the B.M.C Act is quite clear which stipulates that in case the appeal is decided in favour of the appellant and amount of property tax deposited with the Corporation is more than the property tax payable by him, the Commissioner shall adjust the excess amount of the property tax with interest at the rate of 6.25 per centum per annum from the date on which the amount is deposited with the Corporation towards the property taxes payable thereafter. Earlier proviso stipulates that in case the appeal is decided in favour of the Corporation with

interest 6.25 per centum p.a. shall be payable by the Applicant on the balance of the property tax from the date on which the amount of property tax was payable.

The learned Small Causes Judge has concluded that investigating officer's report dated 12.1.1998 was unacceptable and the respondents were directed to calculate rateable value at the rate of Rs.300/= instead of Rs.600/= per sq. mtr. and also were directed to issue fresh bills to the appellants therein.

On this background the present civil application has been filed, which in my view deserves to be allowed because in law the applicants are entitled to adjust the excess property tax and therefore, such direction is required to be issued. In the result the application is made absolute in terms of prayer clauses (a) and (b) with modification to the extent that the interest shall be at the rate of 9% p.a. instead of 14% p.a. as prayed for.

The respondents shall comply with the order within eight weeks from the date of this order.